

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EBENEZAR PANNIKADAVIL,

Plaintiff,

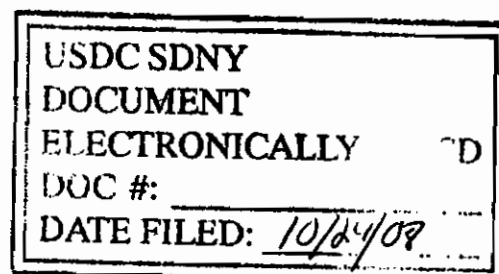
04 Civ. 8916 (RPP)

- against -

**OPINION AND
ORDER**

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION and CAROL RABOY-BRAUNSTEIN,

Defendants.
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ROBERT P. PATTERSON, JR., U.S.D.J.

Defendants' motion to reconsider the Court's decision of July 23, 2008, denying Defendants' motion to dismiss Plaintiff's retaliation claim for failing to promote him in December 2004 due to his filing the Complaint in this action, is denied. (Defs.' Mot. for Reconsideration – Doc. #48.) On October 14, 2008, Plaintiff submitted a responsive affidavit in opposition asserting that his interview for the Associate Laboratory Microbiologist Level I position vacated by Julie Wang of the Microbiology Laboratory was a sham interview. According to Plaintiff, the interview was conducted contrary to hospital practice: prior to his interview with Dr. Hanna, the director of the Microbiology Laboratory, there were no preliminary interviews by first line supervisors or second line supervisors. Moreover, no supervisors were present at his interview with Dr. Hanna. (Plaintiff's Affidavit dated October 14, 2008 at ¶¶ 1-4.) Plaintiff also asserts that, prior to his interview, Dr. Hanna asked why he was applying for the position. Because Plaintiff believed that Dr. Hanna had prejudged his application, he complained to Human Resources about Dr. Hanna's comment. Plaintiff also states that he has inspected his

personnel file, which shows that a negative recommendation on his promotion was made before his interview with Dr. Hanna. Plaintiff further asserts that, at the interview, Dr. Hanna did not even have Plaintiff's application for the position with him. (Id. at ¶ 4.)

Plaintiff's statements challenge the credibility of Dr. Hanna's assertion that his decision to recommend the promotion of Ms. Yelena Kravchik rather than Mr. Pannikadavil for the position was based solely on which candidate presented the best qualifications for this promotion in the Microbiology Laboratory.¹ (Dr. Hanna's Affidavit dated October 7, 2008 at ¶ 9.) Because this presents a genuine issue of fact to be decided by a jury, Plaintiff's retaliation claim relating to Defendants' failure to promote Plaintiff to the Julie Wong vacancy in or about December 2004 will go to trial.

The parties are to file a Joint Pretrial Order by November 14, 2008, and be ready for trial on 48 hours notice on or after December 1, 2008 at 9:30 a.m.

IT IS SO ORDERED.

Dated: New York, New York
October 24, 2008


Robert P. Patterson, Jr.
U.S.D.J.

¹ Plaintiff's other claim, sworn to in his affidavit of September 3, 2008, relates to the Hospital's misleading posting of the position vacancy is irrelevant. The misleading posting complained of is not evidence of discrimination because all employees reading it would have been similarly affected.

Copy of this Opinion and Order sent to:

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